IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 523 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

M/S NANDKISHOR, & 3 - Appellant(s)
Versus
KODANDAS TOPANDAS. - Defendant(s)

==========

Appearance :
MR KV SHELAT for Appellant(s) : 1 - 4.
None for Defendant(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 19/07/2006

ORAL JUDGMENT

By way of this First Appeal, the appellants, original-defendants No. 1 to 4 have challenged the judgment and decree dated 28.2.1985 passed by the learned Judge, City Civil

Court at Ahmedabad in Civil Suit No. 3897 of 1980 by which the learned Judge has partly allowed the suit filed by the respondent herein, original-plaintiff directing the appellants No. 1, 3 and 4 original-defendants No. 1, 3 and 4 to pay Rs. 4,758.85 ps., as Principal and Rs. 2,947.50 with interest as interest, in all Rs. 7,706.35 ps., with future interest calculated at the rate of 12% p.a., from the date of initiation of the suit till the date of realisation over Principal amount of Rs. 4,758.85 ps.

2. The respondent-original-plaintiff filed Civil Suit No. 3897/1980 in the City Civil Court at Ahmedabad to recover Rs. 9,200 with future interest at 12% p.a. It was the case of the plaintiff that he has supplied certain goods from time to time and part payments were made. However, as on 29.10.1976 an amount of Rs. 4,758.85 ps., was due and payable. Defendant No.1 was the partnership firm and it was the case of

the plaintiff that defendants No. 2, 3 and 4 were the partners. The suit was resisted by the defendants and Issues were framed at Exhibit 46. Plaintiff examined Kokandas Topandas and defendants No. 3 and 4 have examined themselves. The main defence of the defendants was that suit was barred by limitation. It was the case of the defendant No.3 that he was not the partner and defendant No.4 was the sold proprietor of defendant No.1 firm and therefore no decree could have been passed against him. It was also submitted on behalf of the defendants that so far as defendant No.2 is concerned similarly no decree can be passed against him. On appreciation of evidence, the learned Judge, City Civil Court at Ahmedabad gave a finding that the plaintiff has proved that he has sold goods on credit to defendant No.1 and the amount of Rs. 4758.85 remained due towards the Principal; and the defendant No.4 has failed to prove that the accounts with the plaintiff were settled. On

appreciation of evidence, the learned Judge also found that defendant No.1 is the proprietary concern and defendant No.4 is its sole proprietor; the defendant No.4 entered into various transactions with the plaintiff and took delivery of clothe goods and signed those documents as an authorised representative of defendant No.4; and therefore ultimately passed a decree against defendants No. 1, 3 and 4 by further considering the fact that on 10.12.1977 a part payment of Rs. 50,000 was made to the plaintiff and as the suit was filed within 3 years from 10.12.1977 the suit was within the period of limitation. Ultimately, the learned Judge did not pass any decree against the defendant No.2, i.e., appellant No.2. Though there is no decree passed against the appellant No.2-herein, original-defendant No.2 still the appellant No.2 has filed the present First Appeal. Be that it may, being aggrieved and dissatisfied with the judgment and decree passed

by the learned Judge of the City Civil Court at Ahmedabad, the appellants, original-defendants No. 1 to 4 have preferred the First Appeal.

3. Shri KV Shelat, learned advocate on behalf of the appellants has submitted that the learned Judge, City Civil Court, Ahmedabad, has materially erred in holding that the suit was within the period of limitation and that there was a part payment of Rs. 50,000 made on 10.12.1977. Shri Shelat has further submitted that the learned trial Court has materially erred in passing the decree against the appellant No.3, original-defendant No.3 as admittedly he was not the partner and still the decree has been passed. No other submission has been made.

4. This Court has considered the Record and Proceedings and gone through the entire evidence as well as the judgment under challenge. The Court below has considered the receipt for the

part-payment of Rs. 50 dated 10.12.1977 and thereafter has considered that the suit is filed within a period of 3 months from 10.12.1977 and therefore the suit is within the period of limitation. On going through the documentary evidence and the Receipt, this Court is in agreement with the reasoning of the learned Judge of the City Civil Court by which it is held that the suit is within the period of limitation. So far as the contention on behalf of the appellants with regard to passing of decree against the appellant No.3-original-defendant No.3 is concerned, on going through the record and the evidence the learned trial Court has rightly held that the defendant No.3, who was also authorised by defendant No.4, has entered into various transactions and signed bills/receipts etc., and taken delivery and therefore the decree against the defendant No.3 is also rightly passed. This Court is in broad agreement with the reasoning given by the learned Trial Court, so far as the

liability of defendant No.3 is concerned. Under the circumstances, the Appeal is required to be dismissed and it is accordingly dismissed. No cost.

[M.R. Shah, J.]

RMR.